



September 26, 2000

Mr. Claud H. Drinnen
First Assistant Attorney
City of Amarillo
509 South East 7th Avenue
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2000-3699

Dear Mr. Drinnen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139422.

The City of Amarillo (the "city") received a request for all the employment records and employment training records for a named city employee. You state you are seeking a decision from this office for six particular items that are responsive to the request.¹ You claim that the six items of information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the medical history information in the named employee's personnel file. Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days after receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish the date, and (4) a copy of the specific information requested or representative samples of the information if voluminous amounts of information is requested. See Gov't Code § 552.301(e)(1)(A), (B), (C), (D).

¹Because you have narrowed your request to this office to those particular six responsive items we assume you have released the remainder of the responsive information to the requestor. If you have not done so you must now release these records. See Gov't Code §§ 552.301; 552.302

When a governmental body fails to submit the requested information to this office for a decision, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st.Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Because you have not submitted the medical records, we have no basis for finding the records confidential. Thus, we have no choice but to order the information released under section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

Next, you assert that the named employee's social security number, home telephone number, and home address are excepted from public disclosure under section 552.117. Section 552.117(1) excepts a public employee's home address, home telephone number, or social security number, or information that reveals whether the employee has family members when the public employee requests, under section 552.024, that this information be kept confidential. Therefore, section 552.117(1) requires you to withhold this information of a current or former employee or official who has elected under section 552.024 to keep this information confidential. See Open Records Decision Nos. 622 (1994), 455 (1987). However, in this instance you submitted an election form signed by the named city employee, on December 29, 1999, in which the employee elected to protect only his home address and telephone number. The submitted election form appears to pre-date the 1995 amendment to section 552.117 that also allows public officials and employees to protect information about family members and social security numbers. Please note that whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, in this instance, in order for the named employee's social security number and family information to be excepted from public disclosure, a proper election must have been made *prior* to the present request for information. Because the named employee did not elect prior to this request to keep confidential his social security number or information revealing whether the employee has family members, this information may not be withheld from public disclosure based on section 552.117(1). We have marked the section 552.117(1) information that may be properly withheld.

However, the named employee's social security number, as well as, other social security numbers that appear in the submitted documents may be withheld in some circumstances under section 552.101 of the Government Code. Section 552.101 excepts from disclosure

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the “Act”) imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.101 also encompasses confidentiality provisions such as section 159.002 of the Occupations Code, known as the Medical Practice Act (“MPA”). Section 159.002 of the Occupations Code provides for the confidentiality of medical records under certain circumstances. The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b). The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). Therefore, the city may release the submitted medical record only in accordance with the MPA.

You also assert that the submitted documents fall within the purview of section 552.102. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex.

App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Act. Common law privacy excepts from disclosure private facts about an individual. Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common law privacy). After reviewing the submitted documents, we do not find any of documents to contain information that implicates an individual's common law right to privacy. Therefore, the city may not withhold any of the information contained in the submitted documents under section 552.102.

In summary, the city must release the medical information that was not submitted to this office. The city must withhold the named employee's home telephone number and address under section 552.117(1). The city may only release the submitted medical record in accordance with the MPA as discussed above. In addition, any social security numbers that are obtained or maintained by the city pursuant to a law enacted on or after October 1, 1990, are confidential and must not be released. The city must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar

days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

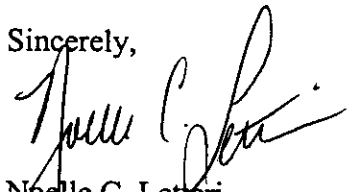
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139422

cc: Encl: submitted documents

cc: Ms. Mary Mitchell
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(w/o enclosures)